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14 **IN THE UNITED STATES DISTRICT COURT**
 15 **FOR THE DISTRICT OF ARIZONA**

16 IN RE: Bard IVC Filters Products Liability Litigation, No. 2:15-MD-02641-DGC

17
 18 **DEFENDANTS' UNOPPOSED**
 19 **MOTION TO STAY EXECUTION OF**
 20 **THE JUDGMENT PENDING APPEAL**
 21 **AND TO APPROVE SUPERSEDEAS**
 22 **BOND**

23 SHERR-UNA BOOKER, an individual,
 24 Plaintiff,
 25 v.
 26 C. R. BARD, INC., a New Jersey
 27 corporation and BARD PERIPHERAL
 28 VASCULAR, INC., an Arizona
 corporation,
 Defendants.

(Assigned to the Honorable David G. Campbell)

CASE NO. CV-16-00474-PHX-DGC

1 Plaintiff Sherr-Una Booker has represented that she does not oppose this motion.

2 On July 9, 2018, this Court entered a judgment in the amount of three million six
 3 hundred dollars (\$3,600,000.00) plus post-judgment interest at the rate of 2.33% per
 4 annum for Plaintiff in this action which was tried by a jury in March 2018. Defendants
 5 C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively, “Bard”) request that the
 6 Court stay execution of the judgment pending appeal and approve supersedeas bond,
 7 attached as Exhibit A, in the amount of \$3,767,760.00 to cover the judgment as well as
 8 post-judgment interest.

9 Rule 62(d) of the Federal Rules of Civil Procedure provides: “If an appeal is taken
 10 the appellant may obtain a stay by supersedeas bond. The bond may be given upon or
 11 after filing the notice of appeal or after obtaining the order allowing the appeal. The stay
 12 takes effect when the court approves the bond.” Fed. R. Civ. P. 62(d). It is well settled that
 13 under Rule 62(d), an appellant is entitled to a stay as a matter of right pending the posting
 14 of a supersedeas bond in a sufficient amount. *See Am. Mfrs. Mut. Ins. Co. v. Am.*
 15 *Broadcasting–Paramount Theatres*, 87 S. Ct.1, 3 (1966) (holding that “a party taking an
 16 appeal from the District Court is entitled to a stay of a money judgment as a matter of
 17 right if he posts a bond in accordance with” the relevant federal rules); *In Re: Wymer*, 5
 18 B.R. 802, 804 (B.A.P. 9th Cir. 1980).

19 Bard now requests approval of its supersedeas bond in the amount of
 20 \$3,767,760.00, which will stay execution on the judgment pending appeal. This amount
 21 covers the judgment of \$3,600,000.00 and post-judgment interest in the amount of
 22 \$167,760.00.¹

23

24 ¹ The total for post-judgment interest was calculated based on the Court’s per annum
 25 figure of 2.33% and for a period of 24 months. According to the Administrative Office of
 26 the United States Courts’ most recent statistics, in the Ninth Circuit for the 2016–2017
 27 period, the median time from filing of a notice of appeal to disposition of that appeal was
 28 21.9 months (without oral argument) to 22.8 months (with oral argument). The 24-month
 post-judgment interest period is therefore above the high-end of the median period for
 disposition in the Ninth Circuit. *See U.S. Courts of Appeals—Median Times for Civil and*
Criminal Cases Terminated on the Merits—During the 12-Month Periods Ending
September 30, 2016 and 2017, available at [*http://www.uscourts.gov/statistics/table/b-4a/judicial-business/2017/09/30*](http://www.uscourts.gov/statistics/table/b-4a/judicial-business/2017/09/30).

CONCLUSION

For the foregoing reasons, Bard respectfully requests that the Court grant this Motion and approve its supersedeas bond in the amount of \$3,767,760.00 and for all other just and proper relief.

RESPECTFULLY SUBMITTED this 19th day of July, 2018.

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**Attorneys for Defendants C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.**

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 19th day of July, 2018, the foregoing was electronically
3 filed with the Clerk of Court using the CM/ECF system which will automatically send
4 email notification of such filing to all attorneys of record.

5 s/Richard B. North, Jr.
6 Richard B. North, Jr.